

Message Text

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INFO OCT-01 ARA-10 ISO-00 L-03 SCSE-00 SCA-01 OMB-01 /017 R

DRAFTED BY FADRC/DR:FMMACHAK:VFH

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P 272351Z FEB 76

FM SECSTATE WASHDC

TO AMEMBASSY MEXICO PRIORITY

INFO AMCONSUL MATAMOROS PRIORITY

UNCLAS STATE 048374

E.O. 11652: N/A

TAGS:AINF, CASC ; MX

SUBJECT: PRIVACY ACT GUIDELINES: CONSULAR FILES

REF: MEXICO 1659, STATE A-395, 75 STATE A-4872

1. PARA 2 LINE 1 OF REFTEL RECEIVED AS FOLLOWS:

"EMBASSY VIEW IS THAT ACT DOES RESTRICT CREATION...".

BASED ON CONCLUSION OF PARA, DEPARTMENT ASSUMED SENTENCE

SHOULD HAVE READ: "EMBASSY VIEW IS THAT ACT DOES

'NOT' RESTRICT CREATION...".

2. PRIVACY ACT REQUIRES THAT PERSONAL INFORMATION

ABOUT INDIVIDUALS COLLECTED BY FEDERAL AGENCIES BE

LIMITED TO THAT WHICH IS RELEVANT, NECESSARY, AND FOR

A LAWFUL PURPOSE. THE DEPARTMENT HAS IDENTIFIED AND

PUBLISHED THOSE SYSTEMS OF RECORDS MAINTAINED BY THE

DEPARTMENT WHICH CONTAIN PERSONAL INFORMATION AND ARE

NAME RETRIEVABLE. IN THE PUBLIC NOTICE FOR CONSULAR

SERVICE AND ASSISTANCE RECORDS (SYSTEM NO. 5) AND

OVERSEAS RECORDS (SYSTEM NO. 25) THE DEPARTMENT IDENTIFIED

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THE STATUTORY AND EXECUTIVE ORDER AUTHORITY FOR THE

COLLECTION AND MAINTENANCE OF CONSULAR FILES, AND SET FORTH THE USES OF SUCH RECORDS.

3. THE DEPARTMENT HAS THEREFORE NOTIFIED THE PUBLIC THAT SUCH RECORDS ARE RELEVANT AND NECESSARY FOR THE DEPARTMENT AND ARE LEGALLY AUTHORIZED, AND DEPARTMENT MAY MAINTAIN RECORDS ON ANY INDIVIDUAL WHOSE ACTIVITIES PLACE HIM WITHIN LEGITIMATE REPORTING INTEREST OF A PARTICULAR RECORD SYSTEM. THE ACT DOES NOT EXPLICITLY GIVE AN INDIVIDUAL THE RIGHT TO CHALLENGE THE MAINTENANCE OF A RECORD SYSTEM, BUT, SINCE THE ACT PERMITS HIM TO REQUEST DELETION OF INFORMATION ABOUT HIMSELF THAT HE ASSERTS IS NOT "ACCURATE, RELEVANT, TIMELY, OR COMPLETE," HE CAN, IF HE WISHES, REQUEST DELETION OF ALL INFORMATION ABOUT HIMSELF, CITING THE ABOVE CRITERIA. HOWEVER, DEPARTMENT MAY DETERMINE INFORMATION IS RELEVANT AND NECESSARY AND DECLINE TO DELETE THE INFORMATION, WHICH INDIVIDUAL CAN CONTEST THROUGH AN ADMINISTRATIVE APPEAL AND ULTIMATELY TO COURT.

4. DEPARTMENT CONCURS WITH EMBASSY'S COMMENT CONCERNING THE PROPRIETY OF THE CONSULAR OFFICER'S NOTING TO THE DEPARTMENT AND IN THE FILES THAT PRISONER DOES NOT WISH ANY INFORMATION RELEASED TO THOSE NOT ENTITLED TO RECEIVE INFORMATION. ALTHOUGH "IMMEDIATE FAMILIES" ARE LISTED AS "ROUTINE USERS" OF CONSULAR SERVICE AND ASSISTANCE RECORDS, DEPARTMENT AS WELL AS POST SHOULD HONOR TO EVERY EXTENT POSSIBLE A PRISONER'S WISHES OF NOT DIVULGING FACTS CONCERNING HIS ARREST AND DETENTION TO NEXT OF KIN, RELATIVES, FRIENDS, ETC., UNLESS POST DETERMINES THAT SUBSECTION (B) (8) OF THE ACT MUST BE IMPLEMENTED. SUBSECTION (B) (8) PROVIDES FOR THE DISCLOSURE OF INFORMATION IN COMPELLING CIRCUMSTANCES AFFECTING THE HEALTH AND SAFETY OF AN INDIVIDUAL.

5. DEPARTMENT WOULD WELCOME ANY FURTHER COMMENTS OR ADDITIONAL QUESTIONS CONCERNING PRIVACY ACT IMPLEMENTATION AT POSTS.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 27 FEB 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976STATE048374
Document Source: CORE
Document Unique ID: 00
Drafter: FMMACHAK:VFH
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760075-0671
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t1976023/aaaaacbu.tel
Line Count: 107
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN DRC
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 76 MEXICO 1659, 76 STATE A-395, 76 STATE A-4872
Review Action: RELEASED, APPROVED
Review Authority: castelsl
Review Comment: n/a
Review Content Flags:
Review Date: 19 JUL 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <19 JUL 2004 by schwenja>; APPROVED <08 SEP 2004 by castelsl>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: PRIVACY ACT GUIDELINES: CONSULAR FILES
TAGS: AINF, CASC, MX, US
To: MEXICO
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006